INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA ▪ 1201 15TH STREET, NW ▪ SUITE 300 ▪ WASHINGTON, DC 20005

202-857-4722 ▪ FAX 202-857-4799 ▪ WWW.IPAA.ORG

July 2, 2018

Via Electronic Mail (Chapman.apple@epa.gov)

Ms. Apple Chapman

Deputy Director, Air Enforcement Division

U.S. Environmental Protection Agency

Mail Code 2242A

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Re: Comments of the Independent Petroleum Association of America in Response to the Environmental Protection Agency's Draft Audit Policy Agreement for New Owners of Oil and Natural Gas Exploration and Production Facilities.

Dear Deputy Director Chapman:

These comments are filed on behalf of the Independent Petroleum Association of America (IPAA). IPAA represents the thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts, that will be significantly affected by the actions resulting from this regulatory proposal. Independent producers drill about 90 percent of American oil and natural gas wells, produce 54 percent of American oil and produce 85 percent of American natural gas.

This document provides comments from the IPAA in response to the U.S. Environmental Protection Agency's ("EPA's" or "the Agency's") request for comments on its proposed changes to EPA's 2000 policy titled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (the "Audit Policy") for new owners of oil and natural gas exploration and production facilities and, in particular, the Agency's Draft Standard Audit Policy Agreement ("Draft Agreement"). IPAA believes that the Audit Policy is an important tool in furtherance of environmental compliance and appreciates EPA's interest in expanding its use by proposing to adopt a more flexible approach to eligibility and administration.

However, IPAA is concerned that the Audit Policy as proposed will not achieve a joint EPA and industry objective of managing environmental impacts in a sound and equitable manner. Detailed comments addressing the challenges presented by the Audit Policy have been submitted by the American Petroleum Institute (API) in its submitted comments; IPAA fully supports those

comments. Additionally, IPAA presents the information below to address and emphasize certain

key points.

Interaction With State Programs

The oil and natural gas production regulated community constantly grapples with responding to

regulatory initiatives and compliance assurance actions, including enforcement. These efforts

come from both state regulators and the federal government, including EPA. Until the EPA

promulgation of New Source Performance Standards (NSPS) in 2011 - Subpart OOOO - and its

expansion in 2016 - Subpart OOOOa, the predominant regulators for air emissions were states,

but the regulatory scope was limited. The Clean Air Act (CAA) structures a federal regulatory

framework that relies on the delegation of its principle actions to states through State

Implementation Plans and other authorities. This structure recognizes that EPA cannot manage

daily compliance with air regulations throughout the states. Importantly, when EPA delegates

federal regulatory authority to states, it determines that the states are competent to manage that

responsibility. EPA should then become a monitor of the state process, not a regulatory

competitor.

However, since the promulgation of Subpart OOOO - perhaps because of EPA's announced

national enforcement initiative for oil and natural gas production - substantial confusion over

regulatory authority resulted in regulatory and litigation conflicts. As the regulated entities, oil

and natural gas producers need far greater clarity than now exists regarding what agency will be

regulating under what conditions. This issue is broadly based; it involves all regulatory events.

IPAA believes that if EPA has delegated authority to a state to manage federal regulations, the

state should then be the regulator for all of the delegated programs. If EPA is dissatisfied with

the state's management, it needs to address those issues with the state through the CAA

processes to withdraw delegation or to overfile on the state's action through those procedures.

The regulated entity should not be in the position of dealing with the demands of two regulators

on the same issue.

The new owner Audit Policy proposal falls in the same category. If a state has

delegated

authority and if the state has a self-audit program, the oil and natural gas producer should only

have to deal with the state if it avails itself of the audit option. If the producer develops an

audit-based compliance agreement, that agreement should protect it from EPA enforcement

actions if the producer complies with its commitments. EPA should only be the self-audit

agency if the state does not have delegation and/or that state has no self-audit program.

As the current Audit Policy proposal has been presented, EPA is ubiquitous. Producers would

have to negotiate an audit-based agreement with EPA to manage its federal government

enforcement exposure. This is inappropriate particularly if EPA maintains the proposed

structure of the Audit Policy framework.

Audit Policy Proposal Exceeding Regulatory Requirements

IPAA believes that EPA's use of its Appendix B structure in the new owner Audit Policy

proposal will result in limited interest and undermine the purpose of facilitating environmental

benefits. The API comments speak to the variety of issues that have discourage the use of

existing self-audit options developed by EPA and there is no need to restate them here.

However, the Appendix B aspect of the EPA Audit Policy proposal creates a specific barrier in

this proposal.

In evaluating the elements of Appendix B, it appears to combine elements of some states'

regulations and EPA consent decrees related to Subpart OOOOa. Both are inappropriate.

Regarding the state regulations, each state develops regulations based on the laws of that state,

its regulatory policies and the nature of operations in the state. Industry repeatedly opposes

national standards that fail to recognize individual state differences. Grabbing one or a few

states audit systems and making them a national framework is essentially the same approach.

The use of EPA consent decrees as a framework is more perplexing. The history of these

consent decrees is burdened by mistrust and adverse negotiating experiences that arose during

the aggressive EPA enforcement activities in Region 8. Most notably, the consent decrees

routinely sought actions not required in the Subpart OOOOa regulations. EPA's existing

self-audit programs are based on compliance with federal regulations - no more, no less. By

developing Appendix B around controversial consent decrees that exceed federal

regulatory

requirements, EPA is essentially saying that oil and natural gas production will be treated

differently than other industries - differently and more harshly. It is hardly the type of proposal

that would encourage voluntary participation.

For these reasons, IPAA believes that EPA needs to remove Appendix B from the Audit Policy

proposal and turn to the current model of self-audit compliance programs that rely on federal

regulations as the standard.

Conclusion

IPAA believes a new owner Audit Policy program has merit. It presents the opportunity for new

owners to assure early action to address any compliance issues that they identify while having

protection against unnecessary enforcement actions and penalties. However, the current Audit

Policy proposal falls short of this objective and IPAA recommends that it should be revised and

improved.

IPAA appreciates the opportunity to submit these comments. If there are questions, please

contact Lee Fuller at lfuller@ipaa.org.

Sincerely,

Lee O. Fuller

Executive Vice President